

MONTANA LEGISLATIVE HISTORY

Chapter 408 19 79

Bill H _____ S 422 Original bill & history C

H. Committee on State Administration

Hearing Date(s) mar 08 ☒ C

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S. Committee on State Administration

Hearing Date(s) Feb 16 ☒ C

Feb 17 ☒ C

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Feb 17 ☒ C

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Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1 *House* BILL NO. *422*
 2 INTRODUCED BY *Hager Nealy*
 3 BY REQUEST OF THE BOARD OF PROFESSIONAL ENGINEERS
 4 AND LAND SURVEYORS

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE
 7 REESTABLISHMENT OF THE BOARD OF PROFESSIONAL ENGINEERS AND
 8 LAND SURVEYORS FOR A PERIOD OF 6 YEARS; TO REVISE THE BOARD
 9 MEMBERSHIP BY ADDING TWO PUBLIC MEMBERS; TO REDUCE BOARD
 10 MEMBERS' TERMS OF OFFICE FROM 5 TO 4 YEARS; TO LIMIT A BOARD
 11 MEMBER TO THREE TERMS; TO REVISE THE BOARD QUORUM
 12 REQUIREMENT; TO INCREASE FEES; TO PROVIDE FOR A 2-YEAR
 13 LICENSE RENEWAL; TO PROVIDE FOR PUBLISHING A ROSTER; TO
 14 PROVIDE THAT CHARGES MADE MUST BE ACTED UPON WITHIN 6
 15 MONTHS; DEFINING 'PUBLIC' FOR PURPOSES OF SUPERVISION OF
 16 PUBLIC WORKS; AND PROVIDING FOR VERIFICATION OF COMPETENCY;
 17 AMENDING SECTIONS 2-8-103, 2-15-1653, 18-2-122, 37-67-201,
 18 37-67-303, 37-67-315, 37-67-318, AND 37-67-331, MCA; AND
 19 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

20
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. Section 1. Board reestablished. The
 23 board of professional engineers and land surveyors, created
 24 by 2-15-1653, is reestablished for a period of 6 years
 25 pursuant to 2-8-122.

1 Section 2. Section 2-8-103, MCA, is amended to read:
 2 "2-8-103. Agencies to terminate. (1) The following
 3 agencies shall terminate on July 1, 1979:

4 (a) board of abstracters, department of professional
 5 and occupational licensing, created by 2-15-1643;

6 (b) board of public accountants, department of
 7 professional and occupational licensing, created by
 8 2-15-1641;

9 (c) board of architects, department of professional
 10 and occupational licensing, created by 2-15-1651;

11 (d) state banking board, department of business
 12 regulation, created by 2-15-1803;

13 (e) state electrical board, department of professional
 14 and occupational licensing, created by 2-15-1654;

15 ~~{f}--board--of--professional--engineers--and--land~~
 16 ~~surveyors--department--of--professional--and--occupational~~
 17 ~~licensing--created-by-2-15-1653;~~

18 ~~{g}{f}~~ office of commissioner of insurance and the
 19 insurance department, state auditor's office, created by
 20 2-15-1902 and 2-15-1903;

21 ~~{h}{g}~~ office of the investment commissioner, state
 22 auditor's office, created by 2-15-1901;

23 ~~{i}{h}~~ board of landscape architects, department of
 24 professional and occupational licensing, created by
 25 2-15-1652;

1 ~~(j)~~(i) board of county printing, department of
2 community affairs, created by 2-15-1102;

3 ~~(k)~~(j) board of plumbers, department of professional
4 and occupational licensing, created by 2-15-1655;

5 ~~(l)~~(k) board of real estate, department of
6 professional and occupational licensing, created by
7 2-15-1642;

8 ~~(m)~~(l) state board of warm air heating, ventilation,
9 and air conditioning, department of professional and
10 occupational licensing, created by 2-15-1656;

11 ~~(n)~~(m) board of institutions, department of
12 institutions, created by 2-15-2303.

13 (2) The following agencies shall terminate on July 1,
14 1981:

15 (a) commission for human rights, department of labor
16 and industry, created by 2-15-1706;

17 (b) board of athletics, department of professional and
18 occupational licensing, created by 2-15-1661;

19 (c) board of barbers, department of professional and
20 occupational licensing, created by 2-15-1625;

21 (d) board of chiropractors, department of professional
22 and occupational licensing, created by 2-15-1613;

23 (e) board of cosmetologists, department of
24 professional and occupational licensing, created by
25 2-15-1626;

1 (f) board of dentists, department of professional and
2 occupational licensing, created by 2-15-1606;

3 (g) board of hearing aid dispensers, department of
4 professional and occupational licensing, created by
5 2-15-1616;

6 (h) board of massage therapists, department of
7 professional and occupational licensing, created by
8 2-15-1627;

9 (i) Montana state board of medical examiners,
10 department of professional and occupational licensing,
11 created by 2-15-1605;

12 (j) board of morticians, department of professional
13 and occupational licensing, created by 2-15-1619;

14 (k) board of nursing, department of professional and
15 occupational licensing, created by 2-15-1610;

16 (l) board of nursing home administrators, department
17 of professional and occupational licensing, created by
18 2-15-1611;

19 (m) board of optometrists, department of professional
20 and occupational licensing, created by 2-15-1612;

21 (n) board of osteopathic physicians, department of
22 professional and occupational licensing, created by
23 2-15-1607;

24 (o) board of pharmacists, department of professional
25 and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horse racing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

(4) The following agency terminates on July 1, 1985: The board of professional engineers and land surveyors, created by 2-15-1651."

Section 3. Section 2-15-1653, MCA, is amended to read:

"2-15-1653. Board of professional engineers and land surveyors. (1) There is a board of professional engineers and land surveyors.

(2) The board consists of seven nine members appointed by the governor. The members are:

(a) five professional engineers who have been engaged in the practice of engineering for at least 12 years and who have been in responsible charge of engineering teaching or important engineering work for at least 5 years and registered in Montana for at least 5 years. No more than two of these members may be from the same branch of engineering.

(b) two registered and practicing land surveyors who have been engaged in the practice of land surveying for at least 12 years and who have been in responsible charge of land surveying or important land surveying work for at least 5 years and registered in Montana for at least 5 years;

(c) two representatives of the public who are not engaged in or directly connected with the practice of engineering or land surveying.

(3) Each member shall be a citizen of the United States and a resident of this state. A member, after serving ~~two~~ three consecutive terms, shall not be reappointed ~~for a period of 2 years.~~

(4) Each member shall serve for a term of 5 ~~4~~ years. The governor may remove a member for misconduct, incompetency, neglect of duty, or for any other sufficient cause.

(5) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121."

Section 4. Section 18-2-122, MCA, is amended to read:

"18-2-122. Plans to bear seal. (1) This state and its political subdivisions such as counties, cities, towns, townships, boroughs, or other political entities or legally constituted boards, commissions, or authorities or officials or employees thereof shall not accept plans and specifications for public buildings, water systems and storage facilities, sewerage systems, wastewater disposal projects, swimming pools, recreational facilities, and similar type projects which may have a direct bearing on the public health and safety for approval unless they bear the seal of the professional engineer for engineering projects or the land surveyor for land surveying projects or licensed architect for architectural projects as provided for the practice of the respective professions by Title 37.

(2) For purposes of this section "public" means open to access by the general public."

Section 5. Section 37-67-201, MCA, is amended to read:

"37-67-201. Organization -- meetings -- quorum -- seal. (1) The board shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules of the board may provide. Notice of all meetings shall be given in such manner as the rules may provide.

(2) The board shall elect annually the following officers: a chairman, a vice-chairman, and a secretary.

(3) A quorum of the board shall consist of not less than four ~~five~~ members.

(4) The board shall adopt and have an official seal."

Section 6. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application -- contents -- fees. (1)

Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references, of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The fee for engineer-in-training is ~~\$20 as prescribed by the board but may not exceed \$30~~, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is ~~\$20 as prescribed by the board but may not exceed \$40~~ for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is ~~\$30 as prescribed by the board but may not exceed \$50~~, which includes cost of transfer of engineer-in-training certification and one examination.

Upon approval of application for registration as a professional engineer, an additional fee equal to the existing yearly renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on application and payment of a fee of ~~of--\$40 as prescribed by the board but not to exceed \$60~~, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is ~~\$20 as prescribed by the board but may not exceed \$30~~, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a land surveyor is ~~\$20 as prescribed by the board but may not exceed \$40~~ for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state,

the application fee is ~~\$39 as prescribed by the board but may not exceed \$50~~, which includes cost of transfer of the certification. No additional fee is required for issuance of a certificate. Upon approval of application for registration as a land surveyor, an additional fee equal to the existing yearly renewal fee must be paid before issuance of a certificate as a land surveyor.

(7) The application fee for registration as both a professional engineer and land surveyor is ~~\$40 as prescribed by the board but may not exceed \$60~~ for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is ~~\$60 as prescribed by the board but may not exceed \$100~~. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and land surveyor, an additional fee equal to the existing yearly renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee."

Section 7. Section 37-67-315, MCA, is amended to read:

"37-67-315. Annual renewal -- fee -- verification of

competency. (1) Certificates of registration expire on December 31 of the appropriate year and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for ~~1-year~~ 2 years. This notice shall be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made during the month of December of the appropriate year by the payment of a fee, not to exceed ~~\$20~~ \$60 biennially, as set by the board for either a professional engineer or land surveyor, or both.

(2) No certificate may be renewed unless the registrant submits a verified statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate ~~annually~~ biennially in the month of December of the appropriate year does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for ~~2--consecutive--years~~ an additional renewal period shall be considered a new applicant and is required to

1 submit a new application."

2 Section 8. Section 37-67-318, MCA, is amended to read:

3 "37-67-318. Roster of licensees to be published by
4 department. A roster showing the names and addresses of
5 registered professional engineers and registered land
6 surveyors shall be published by the department ~~during the~~
7 ~~month of April each year.~~ Copies of this roster shall be
8 mailed to each person registered. Copies shall also be
9 placed on file with the secretary of state, the clerk of
10 each incorporated city and town, and in the office of each
11 county clerk and recorder within the state and furnished to
12 the public on request at a fee established by the board."

13 Section 9. Section 37-67-331, MCA, is amended to read:

14 "37-67-331. Revocation, suspension, or refusal to
15 renew certificate -- grounds -- procedure -- reinstatement.

16 (1) The board may reprimand or revoke, suspend, or refuse to
17 renew the certificate of a registrant found guilty of:

18 (a) fraud or deceit in obtaining a certificate of
19 registration;

20 (b) gross negligence, incompetency, or misconduct in
21 the practice of engineering or land surveying as a
22 registered professional engineer or land surveyor;

23 (c) a felony;

24 (d) violation of rules for professional conduct for
25 professional engineers and land surveyors adopted by the

1 board;

2 (e) if a land surveyor, failure to comply with the
3 Corner Recordation Act.

4 (2) Any person may make charges of fraud, deceit,
5 gross negligence, incompetency, or misconduct against a
6 registrant. The charges shall be made by affidavit and
7 subscribed and sworn to by the person making them and filed
8 with the department. ~~Unless dismissed by the board as~~
9 ~~unfounded or trivial, charges shall be heard by the board~~
10 ~~within 3 months after the date on which they were made. The~~
11 ~~charges shall be investigated by the board and, unless the~~
12 ~~board dismisses the charges after investigation as unfounded~~
13 ~~or trivial, it shall act on the charges within 6 months~~
14 ~~after the date on which the charges were made. The board is~~
15 ~~considered to have acted on the charges if it has given~~
16 ~~notice by mail to the licensee of its intent to revoke,~~
17 ~~suspend, or refuse to renew his license and the notice~~
18 ~~contains the facts or conduct which warrant the intended~~
19 ~~action.~~

20 (3) The board may require a registrant to take a
21 written or oral examination, or both, in a proceeding to
22 reprimand or revoke, suspend, or refuse to renew.

23 (4) If, after hearing, four or more members of the
24 board vote in favor of sustaining the charges, the board
25 shall reprimand, suspend, refuse to renew, or revoke the

1 certificate of registration of the registered professional
2 engineer or land surveyor.

3 (5) The board, for reasons it considers sufficient,
4 may reissue a certificate of registration to a person whose
5 certificate has been revoked if four or more members of the
6 board vote in favor of the reissuance."

7 Section 10. Transition. A person appointed prior to
8 July 1, 1979, to the board of professional engineers and
9 land surveyors for a 5-year term shall serve until the
10 expiration of such term. A member of the board appointed
11 after July 1, 1979, shall serve for a term of 4 years as
12 provided in section 3.

13 Section 11. Effective date. This act is effective on
14 passage and approval.

-End-

not have to do this but could, if they so desired.

Mr. Maholovich said since there were some changes in SB 458, he would address them. He then proceeded to outline their differences for the Committee. He said that SB 458 puts it back to a 7-member board which they support.

Chairman Story then called upon Senator Sandy Mehrens of Anaconda, District 45. He turned the testimony over to John Buckley of the State Electrical Board. Mr. Buckley said that he was speaking for SB 457 which would reestablish the State Electrical Board which was terminated by SB 162 and the sunset law. He said this would return the State Electrical Board to the Department of Professional and Occupational Licensing and further that the inspections should be returned to the department.

The next senator called upon was Senator Tom Hager of District 30, sponsor of SB 422. Senator Hager said that this bill would reestablish the Board of Professional Engineers and Land Surveyors. The first section is to reestablish the board and the second section strikes the reference to the board of professional engineers and land surveyors from the sunset provision of 7-1-79 and reinserts it in the July 1, 1985 one. The third section increases the number on the board from 7 to 9. The two new members are both public members. It also states that a member may not be reappointed after serving three consecutive terms on the board; term of office declines from 5 to 4 years. He then explained the remainder of the bill to the Committee, noting on the bottom of page 14 and the top of page 15, there is an error and in both cases the number should be "5".

Senator Bob Peterson was scheduled to be the next sponsor to testify however, since he was ill, Chairman Story allowed Harry Garberg, representing the Sheet Metal Workers, to explain SB 486 on behalf of Senator Peterson. (See Exhibit attached.) At this time the Chairman asked for a show of hands of how many people were present in support of SB 486, which deals with reconstituting the Board of Warm Air Heating, Ventilating and Air Conditioning. There were four present.

Chairman Story then called for the sponsor of SB 489 to explain the bill. Senator Tom Rasmussen of District 16, Helena, was present and said that the bill would reestablish the board of public accountants. He asked that Mr. Larry Huss discuss the bill for the Committee. Mr. Huss represents the Montana Society of CPA's. He said that there were amendments proposed on this bill and explained the differences between this bill and that of the Legislative Audit Committee.

Chairman Story thanked Mr. Huss and placed SB 498 before the Committee. Senator George Roskie of District 21, Great Falls, chief sponsor of the bill, explained it to the Committee. Sen. Roskie said that SB 498 dealt with the Board of Architecture and basically reconstitutes the board in essentially the same form, conditions and requirements, with two exceptions - one public member has been added and it has a new section dealing with continuing education.

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Gertrude Malone, Board of Nursing, Executive Secretary of the Board, regarding SB 460, speaking, like the weatherman says, partly cloudy, partly sunny - opposed part of it and supported part of it. She spoke only to the fact that the appeals should not include denial of licensure because the applicant does not meet statutory qualifications. Our law specifically states who may receive a license to practice nursing and there is one rule added and that is they must satisfactorily pass the licensing examination. Now, if all those people who write to the Board say they want to be a nurse and are considered denied, this Board of Appeals would be very busy. We have no objection to public members, even though four Registered Nurses and two public members in professional nursing administration is effective in comparison to some of the other boards.

Bill Tangen, representing Montana Board of Professional Engineers and Land Surveyors, in support of SB 422 and against SB 388, stated the two bills are similar in parts; in fact, the statutory legislative part of the bills are very similar. We have no problem with either bill there. The only problem we have is with the board make-up, and I might mention that in connotation with that. Senator Brown's bill 460 has made light of the fact that he would like to keep the present number of members by adding public members. However, the Board would rather see the additional members, making a nine-member board, two of which would be public, mainly because the current law states that no more than two engineers of one discipline can be on the Board at any time. Engineering does encompass several branches, in fact, numerous branches of engineering, such as mechanical, electrical, civil, agricultural and right down the line; so, the Board currently does have a cross-representation of different engineering disciplines, as well as two land surveyors. We do not feel that three public lay members would be able to administer even one of the branches of engineering or land surveying, let alone all the many disciplines that are involved. The application review procedure which does number probably in the neighborhood of two to three hundred per year would have to be handled almost by a technical staff, not by a lay member, to properly qualify people to become registered. There was quite a bit of discussion of whether they were being treated fairly or not. A technical board was the only way to determine that. Senator Himsel did mention that he did have some correspondence from the National Council of Engineering Examiners. They apparently are requiring at least an engineer on the Board. I think that Mr. Kersich alluded to that earlier. There would have to be at least an engineer on the board to keep the national examination that is now given in Montana for engineers and part of the land surveyors.

Roger Tippy, representing the Montana Dental Association, stated that he too, joined the recent witnesses who have passed a slight cloud on the sunshine of Senator Steve Brown's bill, SB 460. The Montana Dental Association has two problems with it for which written testimony is submitted and he also summarized it briefly.

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Two of the sections are inconsistent with the bill amending the dental practice act over in the House. If you send them both to the Governor's Office, and he signs both, someone down at the Legislative Council will have to try and figure out how to make a composite section out of amendments that go in different ways. I've had that experience and it's not a lot of fun. Once I was subpoenaed to appear before the Honorable Nat Allen to explain how I, as the Legislative Council Attorney, had pieced together four different amendments of the assessment data statute in the case entitled, "Louise Rankin Galt vs. Department of Revenue". You can inquire of the Plaintiff's husband, Jack Galt, what a hot time I had in the witness box. If these bills can be harmonized fine. For an example, the 535 says that the Board of Dentists may censor or place on probation, as well as suspend or revoke a license. Amendments have been drawn up to let the Board conduct administrative hearings on all of these. Now, SB 460, just speaks to incurring the power to suspend or revoke to the Appeals Court. This is a drafting problem in any event. Secondly, the dentists have looked at the experience of other states that have tried this citizen records and patients and found that the primary workload of the Board is examinations. The dentist board tests candidates for a hygienist's license or a dentist's license each year and a practical demonstration of their skills is given and the lay member has little or nothing to do, particularly when you would take away the power to conduct and impose sanctions in the license. The public interest that would call for a lay member seems to be minimized. I really don't know what a lay member would do on the Dental Board, except perhaps, participate in their occasional rule-making that they do.

Irving Dayton, Deputy Commissioner of the Board of Higher Education speaking in behalf of the Montana University System and addressing Senate Bills 388 and 422 - these two bills relate to engineering and land surveying. The University System takes no position on what board should regulate these two professions. We do feel that both bills propose some amendments which would improve the existing statutes and urge that all of these amendments be given careful consideration in drafting a final bill. He presented his testimony in writing, copy of which is Attachment #2, and sets out in full the proposed amendment dealing with exemption of faculty members.

The Chairman questioned Mr. Dayton if he was referring to re-constitution of these boards or cleaning up statutes, to which Mr. Dayton responded that if the legislature was not going to sunset this board one way or another then he thought they might as well get the statutes in order while doing it. You're going to have to reenact the present legislation or sunset the board. If you reenact, our claim is you should not reenact something that is unconstitutional, and in this respect I would like to ask Mr. Forsell if he would briefly speak on the constitutional question.

Mr. Louis Forsell stated both of the bills, SB 388 and 422, do add the language pertaining to teachers of advanced engineering scientists and advanced land surveying scientists. We ought to make some changes there. Our Constitution, Article X, Section 9,

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vested in the State Board of Regents of Higher Education which shall have full power, responsibility and authority to manage, coordinate, supervise and control the Montana University System. Now, the effect of this is that the framework of our Constitution intended that the Regents have to be independent and it was so held in the Supreme Court case of Regents vs. Judge. That case also went a little further, although not dealing with this, but dealing with the attempt of the Legislature to set the salaries of the college president in the University system, held that such limitation on significant expenditures indicate complete disregard for the Regents constitutional power. An inherent constitution granting the Regents their power is the realization that the Board of Regents is the competent body for determining priorities in higher education. An important priority is the hiring and keeping of competent personnel. The limitations set forth in Section 12(c), House Bill 274 - this was in 1975, specifically denies the Regents the power to function effectively by setting its own personnel policies and determining its own framework. The condition, therefore, is unconstitutional. Now, the Court there did place the Regents in charge of managing the University System and the Legislature cannot determine the qualifications of faculty members. Now, the State of Michigan, with a similar constitutional autonomy for their Board of Regents, held that an attempt of the Legislature to fix the qualifications of several members of the medical schools at the University of Michigan was entirely up to the Regents.

George Bousliman, Budget Director, testified he neither supported nor opposed the Senate Bills but offered some commentary. First, the Administration very much supports the concept in a lot of the bills that increase public membership on these boards. Second, he urged that if you take the "Super Board" route, and he was not urging us to do that necessarily, but if we do, he would ask that you trigger all those boards simultaneously, because as Senator Jergeson has pointed out, to do otherwise may cause real fiscal chaos in the Department of Professional and Occupational Licensing. And finally, he had an amendment to SB 443 which he left with the secretary, which is technical in nature and would have the effect of transferring the Department of Professional and Occupational Licensing to the Department of Business Regulation, and not having buried in the statutes, as is the case in the bills introduced, a division or an administrator. That is merely to make it consistent with the executive reorganization law and principals.

Bob Kelly, State Fire Marshall, spoke as a proponent of SB 486. Our desire to have the Board of Warm Air Heating, Ventilation and Air Conditioning reestablished is because of our concern in the area of public safety. In the past, improper installation of warm air heating systems has resulted in products of improper combustion and has caused several deaths in the State of Montana. Also, improper installation resulted in explosions, fires and, again, in deaths. SB 486, particularly in sections 7 and 8, require qualifications, and an examination of these qualifications for licensing can, in our estimation, insure more safe and proper installation in the heating systems.

Sonny Hanson, representing the architects, stated that they support SB 422, the engineers' bill, as written and in previous statements questioned whether this bill could be opened up. In reviewing the title and the data within the bill, he questioned whether any amendments as proposed by the Regents could be included. As a point of information, he mentioned that the engineering profession at Montana State University and Montana Tech went through the Board of Personnel Appeals, which had themselves specifically excluded, and they upheld our position. It went to District Court before Judge Bennett - it was upheld, and the Board of Regents introduced House Bill 336 which was heard over in the House to exclude specifically the language that he wishes to exclude here; and, it came out of the Committee, I believe with a 16 to 1 Do Not Pass, and it was sustained on the floor. So, we question whether it can be added or modified at this time. We suggest not.

John Hale, representative of the International Association of Electrical Inspectors, Montana Chapter, and also a licensed electrician and formerly of the Electrical Board, stated he opposed 390 and the "Super Board" bill. As a matter of public safety, bringing public members in and reviewing the applications would not solve the objections. Membership of the board is now five members, being a licensed journeyman electrician, licensed practical electrician and electrical contractor, member of the public utilities, consumer member of the REA and a public member. All the utilities and the REA get input and they know the electrical business, and they do help with the examinations and reviewing applications. It takes an awful lot of time reviewing applications. A good student, if he sat down and studied all the books on electricity and the codes etc., will pass the written examination, but they wouldn't know how to install it. If you don't go by experience and follow through, you would get applicants out there with wiring that would burn down. I do support SB 457 to put the licensing and inspection back in one pit - under one department, division, or what have you. The licensing can be controlled when you're out inspecting. You can see that people are licensed and do the work. You don't have to stand around in the country and in the boondocks to see it. Therefore, I support 457 and 468 and we are in opposition to 247 and 390.

A question from Sen. Brown regarding Sonny Hanson's comments on SB 422, to clarify his position in regards to his statement - Mr. Hanson responded that he was addressing a different issue. The court case Mr. Dayton mentioned and the bill, 336, address the matter of engineers in collective bargaining, and has nothing to do with this; mine addresses the question of whether the statute should have a requirement that a person must be registered in order to teach. These are totally separate issues, and the issue I address has not otherwise been addressed in this legislative session.

Senator Story commented that he didn't see why that isn't pertinent here, if an architect is teaching a method of building and they fall down.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Davis Fordell DATE: 3-16-79

ADDRESS: Box 174 Olney

PHONE: 953-8291 Office - 449-8841

REPRESENTING WHOM? Montana U. System

APPEARING ON WHICH PROPOSAL: SB 388 - 422

DO YOU: SUPPORT? AMEND? OPPOSE? L

COMMENTS: Bill requirement that Teachers
of advanced engineering & land
surveying studies be registered
& licensed is applied to faculty
members of the University System
violates the constitutional
autonomy of the Board of Regents
of Higher Education to govern the
System (see Article X, Section 9
Mont Constitution)

NAME: D.S. HANSON DATE: 2/16/79

ADDRESS: 1600

PHONE: 449-5500

REPRESENTING WHOM? Monte TCHAIKIN Council

APPEARING ON WHICH PROPOSAL: SB-422 & SB 498

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: 1. And Boats for Relationship w/ other

states

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: W. L. M. M. M. DATE: _____

ADDRESS: 2709 Beth Lane

PHONE: 656-1552

REPRESENTING WHOM? *NONE*

APPEARING ON WHICH PROPOSAL: *5/22*

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: BILL TANGEN DATE: 2/16/79

ADDRESS: 3920 MC HUGH HELENA

PHONE: 443-5646

REPRESENTING WHOM? BOARD OF PROF. ENGINEERS & LAND SURVEYORS

APPEARING ON WHICH PROPOSAL: SB 422

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: This Board should remain under Occupational Licensing
because of the following reasons: 1) Cost to the State is presently
non-existent; 2) Reciprocity with other states is currently working very
well, with the concept of SB 398 this reciprocity would be seriously
impaired; 3) Review of applications need to be handled by informed
and professional people and not lay members to be fair and accurate
in determining the qualifications of potential registrants.

NAME:

Henry E. Sington

DATE:

Feb 1, 1979

ADDRESS:

Helena

PHONE:

449-3024

REPRESENTING WHOM?

Montana University System

APPEARING ON WHICH PROPOSAL:

SB 388 & 422

DO YOU:

SUPPORT?

AMEND?

X

OPPOSE?

COMMENTS:

See prepared testimony



THE MONTANA UNIVERSITY SYSTEM

33 SOUTH LAST CHANCE GULCH

HELENA, MONTANA

59601

COMMISSIONER OF HIGHER EDUCATION

Summary of testimony on

SB 388 An Act Providing for the Regulation of the Practice of Professional Engineering and Land Surveying by a Board of Professional Service Regulation . . .

SB 422 An Act to Provide for the Reestablishment of the Board of Professional Engineers and Land Surveyors . . .

We take no position on which board should regulate professional engineers and land surveyors. We do feel that both bills propose some amendments which would improve the existing statutes and urge that all of these amendments be given careful consideration in drafting a final bill.

Our concern with both bills is a matter which is in the existing statutes but which neither bill deals with. The practice of engineering is defined to include "teaching of advanced engineering subjects" (37-67-101(6)) and the practice of land surveying is defined to include "teaching of (advanced) land surveying subjects" (37-67-101(7)(b)).

We have no problem insofar as time engaged in these teaching activities is counted as time engaged in professional practice for purposes of qualifying for registration.

However, if we combine this definition of the practice of engineering (or land surveying) with the fact that it is unlawful to engage in this practice without being registered (37-67-301), we are led to the conclusion that persons teaching advanced engineering subjects (or land surveying subjects) must be registered.

We find this result objectionable on several grounds:

- 1) Such a requirement is not related to public health, safety or welfare and hence goes beyond the purpose of professional registration and is merely self-serving.
- 2) The determination of the qualifications of faculty members in the Montana University System is properly the province of the Board of Regents under the powers conferred by the constitution.
- 3) This statutory requirement has probably been superseded or repealed by implication by the Constitution of 1972.
- 4) This requirement has never been observed or enforced.

5) Any attempt to enforce this requirement from outside the University System would almost surely be met with litigation.

6) No other profession has a statutory requirement of licensing or registration in order to teach at the college or university level. Engineering and land surveying are not distinguished from these other professions in any essential way.

We propose that this problem be eliminated by amending the exemption clause to add an additional exemption, as follows:

37-67-103 Exemptions. The following are exempt from coverage under this chapter:

(6) Faculty members in the Montana University System who are performing duties in connection with their employment.

Irving E. Dayton
Deputy Commissioner
for Academic Affairs

NAME: John H. Harrison DATE: 2/15/79

ADDRESS: Wesley

PHONE: 442-7055

REPRESENTING WHOM? San Francisco Civil Rights

APPEARING ON WHICH PROPOSAL: S.B. 433

DO YOU: SUPPORT? ☒ AMEND? ☐ OPPOSE? ☐

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.



THE MONTANA UNIVERSITY SYSTEM

33 SOUTH LAST CHANCE CULCH

HELENA, MONTANA

59601

COMMISSIONER OF HIGHER EDUCATION

Summary of testimony on

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Irving E. Dayton
Deputy Commissioner
for Academic Affairs

2-17-79

the public and assure that these people are competent, we could perhaps load the board with public members, but he did not feel the board was functioning properly now.

Discussion pertained to the question if this board should have under its control both the licensing and inspection functions.

Sen. Hafferman made a substitute motion that SB 457 DO PASS.

Discussion pertained to the main consideration of the protection of the public health, welfare and safety by this board and if public members would be effective in assuring properly competent people were licensed.

Upon roll call vote the substitute DO PASS motion failed, with Senators Roskie, Brown, Rasmussen and Jergeson voting "no".

RECONSIDERATION OF SENATE BILLS 422 AND 388: Sen. Hafferman moved that Senate Bill No. 442 DO PASS.

Sen. Jergeson reminded the Committee that it was the Engineers & Land Surveyors who asked for the sunset review originally.

Sen. Roskie questioned the increased number on the board as this bill recreates it as it would add two public members; Sen. Rasmussen also questioned if this profession was large enough to justify seven professional members.

Sen. Jergeson moved that Senate Bill 442 be amended on page 6, line 24 to strike "9" and insert "7", and on page 7, line 1, to strike "5" and insert "3", which takes off two engineers.

Sen. Roskie felt the nine-member board should include two land surveyors for better representation.

Discussion centered on the appropriate number of people to adequately represent the various professions and the public on this board.

Sen. Rasmussen made a substitute motion to amend SB 442 to provide that the board consist of four professional engineers, two public members and one land surveyor; this motion failed with only Senators Rasmussen and Hafferman voting "yes".

On Sen. Jergeson's motion to amend to provide three professional engineers, two land surveyors and two public members, this motion also failed, with Senators Story, Roskie, Rasmussen and Ryan voting "no".

Reverting back to Sen. Hafferman's motion for a Do Pass, this carried by majority vote, with Senator Jergeson voting "no".

FOIA b 7, EXEMPTED

SENATE COMMITTEE STATE ADMINISTRATION

Date Feb. 17, 1979 SENATE Bill No. 422 Time 1:30

NAME	YES	NO
Senator Pete Story, Chairman	☒	
Senator George F. Roskie, V. Chairman	☒	
Senator Bob Brown	☒	
Senator A. T. (Tom) Rasmussen	☒	
Senator Patrick L. Ryan	☒	
Senator Greg Jergeson		☒
Senator William F. Hafferman	☒	

Jennie L. Palmer
Secretary

Pete Story
Chairman

Motion: Senator Bill Hafferman moved that Senate Bill No. 422
DO PASS, motion carried by majority vote with Senator
Jergeson voting "no".

(include enough information on motion--put with yellow copy of committee report.)

ROLL CALL VOTE RECORD

SENATE COMMITTEE STATE ADMINISTRATION

Date Feb. 17, 1979

SENATE Bill No. 422 Time 2:30 PM

NAME

YES

NO

Senator Pete Story, Chairman		☒
Senator George F. Roskie, V. Chairman		☒
Senator Bob Brown	☒	
Senator A. T. (Tom) Rasmussen		☒
Senator Patrick L. Ryan		☒
Senator Greg Jergeson	☒	
Senator William F. Hafferman	☒	

Jennie L. Palmer
Secretary

Pete Story
Chairman

Motion: Senator Jergeson moved that Senate Bill No. 422
be amended to provide for a Board of Engineers consisting of
7 members, 3 of which would be professional engineers, 2 land
surveyors and 2 public members; motion failed with Senators
Story, Roskie, Rasmussen and Ryan voting "no".
(include enough information on motion--put with yellow copy of
committee report.)

ROLL CALL VOTE TAKEN

SENATE COMMITTEE STATE ADMINISTRATION

Date Feb. 17, 1979 SENATE Bill No. 442 Time 4:00
Exp. of the bill to take up a bill on the same subject
 NAME YES NO *1 YES NO*

Senator Pete Story, Chairman		☒
Senator George F. Roskie, V. Chairman		☒
Senator Bob Brown		☒
Senator A. T. (Tom) Rasmussen	☒	
Senator Patrick L. Ryan		☒
Senator Greg Jergeson		☒
Senator William F. Hafferman	☒	

Jennie L. Palmer
Secretary

Pete Story
Chairman

Motion: A substitute motion to Sen. Jergeson's motion was
made by Sen. Tom Rasmussen to Senate Bill No. 442 to amend
the Bill to provide for an Engineers Board consisting of 4 profes-
sional engineers, 1 land surveyor and 2 public members; motion
failed with only Senators Rasmussen and Hafferman voting "yes".

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 17 1970

MR. President

We, your committee on State Administration

having had under consideration Senate Bill No. 422

Respectfully report as follows: That Senate Bill No. 422,
Introduced Bill,

DO PASS

FEJA-If they had four from the industry could they still appoint the landowners?
NATHE-Right now two have to be from the industry -- one lawyer, one producer, Mr. Iverson is another producer, and another attorney. The attorneys are currently the dominant force on the board. ALLEN-The reason I suggested more people from the industry was so we could get rid of some of the attorneys. McBRIDE-Couldn't we say that only landowners with oil and gas on their property could be appointed?
NATHE-That was why I suggested that they come from oil and gas areas because even if they don't actually have holdings they will be acquainted with the problems.
JOHNSTON-Don't you agree that there can be problems all the way from seismograph to abandonment - so, perhaps an amendment saying that they be from an oil and gas producing area. NATHE-Yes, that's why I think one should own minerals. BRAND-Is this reference to "quasi-judicial"? ALLEN-Under the new constitution, they are quasi-judicial. They can do almost anything to help control the problems that encounter. I think they have all the power they need. You might bear in mind 34 out of Montana's 56 counties have oil and gas production.

SB 422-Sponsored by Senator Hager -- This bill includes all of the questions raised by the sunset review. There is a statement of intent because of administrative rule making authority. During the Senate hearing we heard 12 or 14 bills and I asked for some amendments, but they weren't inserted, so I am presenting them now (see Attachment #1). The sunset clause is unnecessary because of a House Bill you have passed.

MORRIS GUY-Vice Chairman of the Board of Professional Engineers -- I'm here mainly to answer questions, but also to let you know that I worked with the Sunset Audit and in drafting this our board followed most of the sunset suggestions. We feel the addition of a public member chosen in the same manner as present members would be a critique for the present board. We added that anyone reapplying to practice has to qualify. We also suggested that the roster be published biennially and available otherwise on request.

SONNY HANSON-Montana Technical Council -- We register land surveyors, engineers, architects. "Sunset" does not describe the actual function of the audit we are speaking of -- they are required to review and recommend changes or if they so feel, recommend sunseting. The audit did come up with one very interesting one -- a superboard covering a number of boards. In our case, we cannot have a public board because we would lose reciprocity with other states. The audit committee recommended the continuation of this board.

OPPONENTS

DR. IRVING DAYTON-Deputy Commissioner of Higher Education -- Dr. Dayton had much to say, please see Attachment #2. Like Sonny said, these were all heard at one time in the Senate, but my point is -- WHO decides?

HAGER-I think there's a need for this board and urge your approval.

HANSON-We do have concerns with these amendments. The instructors at the university supported the demise of 399. I believe it isn't in the title because the bill doesn't address exemptions (he is referring to the amendment offered by Dr. Dayton). I would oppose Dr. Dayton's amendment. The engineers are a small group within

March 8, 1971

(HANSON continued)-university and we don't want them to be involved in the collective bargaining process. This bill addresses the reestablishment of the board as they are talking about qualifications of professors. The bargaining agreement specifically excludes the engineers.

DAYTON-The same points were brought up at the Senate hearing. The 399 bill dealt with collective bargaining and this bill doesn't deal with that at all.

GUAY-The particular item that Dayton is addressing was written into the bill when the Montana registration law was rewritten to improve the quality of individuals being registered. The main theme of that rewrite was to increase the educational and experiential requirements of individuals representing themselves as professional. The board member who was also a professor felt that graduates lacked responsiveness in their professional attitude; so he required that there be a professional or motivating attitude. This issue can be resolved in the courts. This bill is needed to reinstitute the board. We have had all the professors come in and take the exam and I think that issue can be addressed in other places.

SMITH-If this bill is passed, professors will have to be verified? DAYTON-For 10 years I have sat in promotion meetings with the man you are speaking of. The Dean of the school should determine professional attitude. The first time there's an attempt to go to court, you will lose your entire law. This law will go down the first time you try it. We will never accede to the faculty members having to be registered and the law currently states that.

BARDANOUVE-Doesn't page 8, line 16 and 17 broaden the definition of public building? HANSON-Yes, this is at the request of the Audit Committee. In the architects bill this same wording was contained. BARDANOUVE-Then from now on not a single building can be built without your seal of approval on it? HANSON-But we don't build buildings; this deals with engineering functions -- we are talking about water systems, etc. The work within the building is done by an architect -- we are only involved in the water, sewer, and perhaps in the structural capabilities. We wouldn't come up with this, the Audit Committee did, and we don't want to be sunsetted. BARDANOUVE-But don't you agree that this broadens the definition drastically? (Hanson gave no definitive reply to this)

EXECUTIVE SESSION

HB 900-BARDANOUVE-I would be somewhat reluctant to put in all those amendments because it would be tying the hands of the Governor -- anytime he makes an appointment he consults the people involved. The lawyers on that board tend to identify themselves completely with the industry.

JOHNSTON-I'd rather have three producers, and so I would move to amend: (1) line 14, following: "members" strike: "2", insert: "3"; (2) line 17, following: "landowners"; insert: "from an oil and gas producing area".

MOERKE moved to segregate the amendments for the purpose of voting, so moved and carried.

JOHNSTON-Will this force the lawyers off? JOHNSTON-I think that it will force them out and.

The first amendment carried unanimously.

SALES-Even if we did get this in Gallatin County, I would want someone from the eastern part that has had experience with this.

The second amendment failed on a roll call vote 9 - 6.

FEDA moved HB 900 AS AMENDED DO PASS.

BARDANOUVE moved to amend the title and body to reflect that the bill was effective upon passage and approval, and Feda withdrew his motion, but Bardanouve's motion carried unanimously.

Then Feda moved AS AMENDED DO PASS again, which carried unanimously.

SB 422-BARDANOUVE moved the university amendment submitted by Dr. Dayton because he felt the bill as written was a violation of their rights.

ZBLOTARSKI-You need a title amendment to reflect the addition of 37-67-103 - this wouldn't change the scope of the title, and it creates a new section amending that section - I checked with the Code Commissioner.

Dayton's amendment carried 16 - 2.

JOHNSTON moved Hager's amendments.

JOHN NORTHEY-Attorney for the Legislative Auditor -- The purpose of that is because the sunset law provided that any of these boards could be reestablished for a period of 6 years. Scully put in a bill that takes away the 6 years thing because that is too often, but leaves in that anytime the Legislature so desires, the agency may be sunsetted.

The motion to accept Hager's amendments carried unanimously, but Northey qualified that these hadn't been part of the audit committee's recommendations.

SALES moved to strike Section 4 on page 8 in its entirety, because it was no longer being amended with the amendments already added. The motion carried with Johnston opposing.

BARDANOUVE moved SB 422 AS AMENDED BE CONCURRED IN, which carried unanimously.

SB 112-KANDUCH moved BE CONCURRED IN, which carried unanimously.

SB 156-McBRIDE moved BE CONCURRED IN as written, which carried unanimously.

SB 28-JOHNSTON moved BE CONCURRED IN.

PORTER moved to amend line 7 in the title - striking 1978 and inserting 1977, which carried, so Johnston altered his motion to AS AMENDED BE CONCURRED IN, which carried unanimously.

SB 6-JOHNSTON moved BE CONCURRED IN.

SENATE BILL NO. 422

INTRODUCED BY HAGER, HEALY

BY REQUEST OF THE BOARD OF PROFESSIONAL ENGINEERS

AND LAND SURVEYORS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE REESTABLISHMENT OF THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS FOR A PERIOD OF 6 YEARS; TO REVISE THE BOARD MEMBERSHIP BY ADDING TWO PUBLIC MEMBERS; TO REDUCE BOARD MEMBERS' TERMS OF OFFICE FROM 5 TO 4 YEARS; TO LIMIT A BOARD MEMBER TO THREE TERMS; TO REVISE THE BOARD QUORUM REQUIREMENT; TO INCREASE FEES; TO PROVIDE FOR A 2-YEAR LICENSE RENEWAL; TO PROVIDE FOR PUBLISHING A ROSTER; TO PROVIDE THAT CHARGES MADE MUST BE ACTED UPON WITHIN 6 MONTHS; ~~DEFINING "PUBLIC" FOR PURPOSES OF SUPERVISION OF PUBLIC WORKS~~; AND PROVIDING FOR VERIFICATION OF COMPETENCY; ~~AND EXEMPTING CERTAIN FACULTY MEMBERS IN THE MONTANA UNIVERSITY SYSTEM FROM THE PROVISIONS OF TITLE 37, CHAPTER 67~~ AMENDING SECTIONS 2-8-103, 2-15-1653, ~~2-8-122,~~ ~~37-67-103,~~ 37-67-201, 37-67-303, 37-67-315, 37-67-318, AND 37-67-331, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Board reestablished. The board of professional engineers and land surveyors, created

by 2-15-1653, is reestablished for a period of 6 years pursuant to 2-8-122.

Section 2. Section 2-8-103, MCA, is amended to read:

"2-8-103. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 2-15-1643;

(b) board of public accountants, department of professional and occupational licensing, created by 2-15-1641;

(c) board of architects, department of professional and occupational licensing, created by 2-15-1651;

(d) state banking board, department of business regulation, created by 2-15-1803;

(e) state electrical board, department of professional and occupational licensing, created by 2-15-1654;

~~(f) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 2-15-1653~~

~~(g)(1)~~ office of commissioner of insurance and the insurance department, state auditor's office, created by 2-15-1902 and 2-15-1903;

~~(h)(1)~~ office of the investment commissioner, state auditor's office, created by 2-15-1901;

~~(i)(1)~~ board of landscape architects, department of

1 professional and occupational licensing, created by
2 2-15-1652;

3 †††lll board of county printing, department of
4 community affairs, created by 2-15-1102;

5 †††lll board of plumbers, department of professional
6 and occupational licensing, created by 2-15-1655;

7 †††lll board of real estate, department of
8 professional and occupational licensing, created by
9 2-15-1642;

10 †††lll state board of warm air heating, ventilation,
11 and air conditioning, department of professional and
12 occupational licensing, created by 2-15-1656;

13 †††lll board of institutions, department of
14 institutions, created by 2-15-2303.

15 (2) The following agencies shall terminate on July 1,
16 1981:

17 (a) commission for human rights, department of labor
18 and industry, created by 2-15-1706;

19 (b) board of athletics, department of professional and
20 occupational licensing, created by 2-15-1661;

21 (c) board of barbers, department of professional and
22 occupational licensing, created by 2-15-1625;

23 (d) board of chiropractors, department of professional
24 and occupational licensing, created by 2-15-1613;

25 (e) board of cosmetologists, department of

1 professional and occupational licensing, created by
2 2-15-1626;

3 (f) board of dentists, department of professional and
4 occupational licensing, created by 2-15-1606;

5 (g) board of hearing aid dispensers, department of
6 professional and occupational licensing, created by
7 2-15-1616;

8 (h) board of massage therapists, department of
9 professional and occupational licensing, created by
10 2-15-1627;

11 (i) Montana state board of medical examiners,
12 department of professional and occupational licensing,
13 created by 2-15-1605;

14 (j) board of morticians, department of professional
15 and occupational licensing, created by 2-15-1619;

16 (k) board of nursing, department of professional and
17 occupational licensing, created by 2-15-1610;

18 (l) board of nursing home administrators, department
19 of professional and occupational licensing, created by
20 2-15-1611;

21 (m) board of optometrists, department of professional
22 and occupational licensing, created by 2-15-1612;

23 (n) board of osteopathic physicians, department of
24 professional and occupational licensing, created by
25 2-15-1607;

(o) board of pharmacists, department of professional and occupational licensing, created by 2-15-1609;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 2-15-1608;

(q) board of psychologists, department of professional and occupational licensing, created by 2-15-1617;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 2-15-1614;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 2-15-1615;

(t) board of veterinarians, department of professional and occupational licensing, created by 2-15-1618;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 2-15-2202.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of aeronautics, department of community affairs, created by 2-15-1103;

(b) state board of hail insurance, department of agriculture, created by 2-15-3003;

(c) board of horse racing, department of professional and occupational licensing, created by 2-15-1662;

(d) board of livestock, department of livestock, created by 2-15-3102;

(e) board of milk control, department of business regulation, created by 2-15-1802;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 2-15-3303;

(g) Montana outfitters council, department of fish and game, created by 2-15-3403;

(h) public service commission, department of public service regulation, created by 69-1-102;

(i) board of sanitarians, department of professional and occupational licensing, created by 2-15-1631;

(j) board of water and wastewater operators, department of health and environmental sciences, created by 2-15-2105;

(k) board of water well contractors, department of professional and occupational licensing, created by 2-15-1632.

~~44) The following agency terminates on July 1, 1983: The board of professional engineers and land surveyors, created by 2-15-1653.~~

Section 3. Section 2-15-1653, MCA, is amended to read: "2-15-1653. Board of professional engineers and land surveyors. (1) There is a board of professional engineers and land surveyors.

1 (2) The board consists of seven ~~nine~~ members appointed
2 by the governor. The members are:

3 (a) five professional engineers who have been engaged
4 in the practice of engineering for at least 12 years and who
5 have been in responsible charge of engineering teaching or
6 important engineering work for at least 5 years and
7 registered in Montana for at least 5 years. No more than
8 two of these members may be from the same branch of
9 engineering.

10 (b) two registered and practicing land surveyors who
11 have been engaged in the practice of land surveying for at
12 least 12 years and who have been in responsible charge of
13 land surveying or important land surveying work for at least
14 5 years and registered in Montana for at least 5 years;

15 ~~(c) two representatives of the public who are not~~
16 ~~engaged in or directly connected with the practice of~~
17 ~~engineering or land surveying.~~

18 (3) Each member shall be a citizen of the United
19 States and a resident of this state. A member, after
20 serving two ~~three~~ consecutive terms, shall not be
21 reappointed for a period of 2 years.

22 (4) Each member shall serve for a term of 5 ~~4~~ years.
23 The governor may remove a member for misconduct,
24 incompetency, neglect of duty, or for any other sufficient
25 cause.

1 (5) The board is allocated to the department for
2 administrative purposes only as prescribed in 2-15-121."

3 Section 4~~v~~--Section 18-2-122~~v~~--MCA~~v~~--is amended to--read:
4 "18-2-122~~v~~--Plans--to--bear--seal~~v~~ ~~111~~ This state and its
5 political subdivisions--such--as--counties~~v~~--cities~~v~~--towns~~v~~
6 townships~~v~~--boroughs~~v~~--or--other--political--entities--or--legally
7 constituted boards~~v~~--commissions~~v~~--or--authorities--or--officials
8 or--employees--thereof--shall--not--accept--plans--and
9 specifications--for--public--buildings~~v~~--water--systems--and
10 storage facilities~~v~~--sewerage--systems~~v~~--wastewater--disposal
11 projects~~v~~--swimming--pools~~v~~--recreational--facilities~~v~~--and
12 similar-type-projects--which--may--have--a--direct--bearing--on--the
13 public-health-and-safety--for--approval--unless--they--bear--the
14 seal--of--the--professional-engineer--for--engineering-projects
15 or--the--land-surveyor--for--land-surveying-projects--or--licensed
16 architect--for--architectural-projects~~v~~--as--provided--for--the
17 practice--of--the--respective--professions--by--Title 37

18 ~~121--For--purposes--of--this--section--"public"--means--open~~
19 ~~to--access--by--the--general--public~~v~~"~~

20 ~~SECTION 4~~v~~--SECTION 37-67-103~~v~~--MCA~~v~~--IS--AMENDED--19-REAR~~v~~~~
21 ~~"37-67-103~~v~~--Exemptions~~v~~--The--following--are--exempt--from~~
22 ~~coverage--under--this--chapter~~v~~~~

23 ~~111--the--practice--of--any--other--legally--recognized~~
24 ~~professions--or--trades~~v~~~~

25 ~~121--the--mere--execution--of--work--by--a--contractor~~v~~--as~~

distinguished-from-its-planning-or-design-or-the-supervision
of-the-construction-of-work-as-a-foreman-or--superintendent

(3)--the-work--of--an--employee--or-a-subordinate-of-a
person-holding-a--certificate--of--registration--under--this
chapter-or-an-employee-of-a-person-practicing-lawfully-under
this--chapter--provided--such--work--does-not-include-final
engineering-or-land-surveying-designs-or--decisions--and--is
done--under--the--direct--supervision--of-a-person-holding-a
certificate-of-registration-under-this-chapter-or--a--person
practicing-lawfully-under-this-chapter

(4)--the--practice---of--professional--engineering--by
licensed-architects-where-the-practice-is-purely--incidental
to-their-practice-of-architecture

(5)--the--practice--of--professional-engineering-or-land
surveying-in-this-state-by-a-firm-partnership-corporation
or-joint-stock-association-or-by-its-members--officers--or
employees---on---its---behalf--if--each--person--personally
supervising-and-in-direct-charge-of-all--activities--of--the
firm--partnership--corporation--or-joint-stock-association
which-constitutes-the-practice-is-a-professional-engineer-or
land-surveyor-holding-a-certificate--of--registration--under
this-chapter

(6)--faculty--members--in-the-Montana-university-system
who--are--performing--duties--in--connection---with---their
employment

Section 4. Section 37-67-201, MCA, is amended to read:

"37-67-201. Organization -- meetings -- quorum --
seal. (1) The board shall hold at least two regular meetings
each year. Special meetings shall be held at such time as
the rules of the board may provide. Notice of all meetings
shall be given in such manner as the rules may provide.

(2) The board shall elect annually the following
officers: a chairman, a vice-chairman, and a secretary.

(3) A quorum of the board shall consist of not less
than four five members.

(4) The board shall adopt and have an official seal."

Section 5. Section 37-67-303, MCA, is amended to read:

"37-67-303. Application -- contents -- fees. (1)
Applications for registration shall be on forms prescribed
by the board and furnished by the department, shall contain
statements made under oath showing the applicant's education
and a detailed summary of his technical work, and shall
contain not less than five references, of whom three or more
shall be engineers or land surveyors having personal
knowledge of his engineering or land surveying experience.

(2) The fee for engineer-in-training is \$20 as
prescribed by the board but may not exceed \$30, which shall
accompany the application and shall include the cost of one
examination. No additional fee is required for issuance of a
certificate.

1 (3) The application fee for registration as a
 2 professional engineer is \$20 as prescribed by the board but
 3 may not exceed \$40 for those holding an engineer-in-training
 4 certificate validated for Montana. For those holding a valid
 5 engineer-in-training certificate from some other state, the
 6 application fee is \$30 as prescribed by the board but may
 7 not exceed \$50, which includes cost of transfer of
 8 engineer-in-training certification and one examination.
 9 Upon approval of application for registration as a
 10 professional engineer, an additional fee equal to the
 11 existing yearly renewal fee must be paid before issuance of
 12 a certificate as a professional engineer.

13 (4) The department, subject to approval by the board,
 14 may, on application and payment of a fee of ~~\$40~~ as
 15 prescribed by the board but not to exceed \$60, issue a
 16 certificate of registration as a professional engineer to a
 17 person who holds a certificate of qualification or
 18 registration issued to him by the committee on national
 19 engineering certification of the national council of
 20 engineering examiners or by a state, territory, or
 21 possession of the United States or by another country if the
 22 applicant's qualifications meet the requirements of this
 23 chapter and the rules of the board.

24 (5) The fee for land surveyor-in-training is \$20 as
 25 prescribed by the board but may not exceed \$30, which shall

1 accompany the application and shall include the cost of one
 2 examination. No additional fee is required for issuance of
 3 a certificate.

4 (6) The application fee for registration as a land
 5 surveyor is \$20 as prescribed by the board but may not
 6 exceed \$40 for those holding a land surveyor-in-training
 7 certificate validated in Montana. For those holding a valid
 8 land surveyor-in-training certificate from some other state,
 9 the application fee is \$30 as prescribed by the board but
 10 may not exceed \$50, which includes cost of transfer of the
 11 certification. No additional fee is required for issuance of
 12 a certificate. Upon approval of application for registration
 13 as a land surveyor, an additional fee equal to the existing
 14 yearly renewal fee must be paid before issuance of a
 15 certificate as a land surveyor.

16 (7) The application fee for registration as both a
 17 professional engineer and land surveyor is \$40 as prescribed
 18 by the board but may not exceed \$60 for those holding
 19 engineer-in-training and land surveyor-in-training
 20 certificates validated in Montana. For those holding valid
 21 engineer-in-training and land surveyor-in-training
 22 certificates from another state, the application fee is \$60
 23 as prescribed by the board but may not exceed \$100. The fee
 24 shall accompany the application. Upon approval of
 25 application for registration as a professional engineer and

1 land surveyor, an additional fee equal to the existing
2 yearly renewal fee must be paid before issuance of a
3 certificate.

4 (8) If the board denies issuance of a certificate of
5 registration to any applicant, the initial fee deposited
6 shall be retained as an application fee."

7 Section 6. Section 37-67-315, MCA, is amended to read:

8 "37-67-315. Annual renewal -- fee -- verification of
9 competency. (1) Certificates of registration expire on
10 December 31 of the appropriate year and become invalid on
11 that date unless renewed. The department shall notify every
12 person registered under this chapter of the date of the
13 expiration of his certificate and the amount of the fee
14 required for its renewal for ~~1-year~~ 2 years. This notice
15 shall be mailed at least 1 month in advance of the date of
16 the expiration of the certificate. Renewal may be made
17 during the month of December of the appropriate year by the
18 payment of a fee, not to exceed \$20 \$60 biennially, as set
19 by the board for either a professional engineer or land
20 surveyor, or both.

21 (2) No certificate may be renewed unless the
22 registrant submits a verified statement to the effect and
23 the board is satisfied that he has maintained competency by:

24 (a) the continued practice of engineering or land
25 surveying; or

1 (b) engaging in other activities that provide for the
2 maintenance of competency as prescribed by board rule.

3 (3) Failure on the part of a registrant to renew his
4 certificate annually biennially in the month of December of
5 the appropriate year does not deprive him of the right of
6 renewal; however, a registrant who fails to pay the renewal
7 fee for ~~2--consecutive--years~~ an additional renewal period
8 shall be considered a new applicant and is required to
9 submit a new application."

10 Section 7. Section 37-67-318, MCA, is amended to read:

11 "37-67-318. Roster of licensees to be published by
12 department. A roster showing the names and addresses of
13 registered professional engineers and registered land
14 surveyors shall be published by the department ~~during--the~~
15 ~~month--of--April--each--year~~. Copies of this roster shall be
16 mailed to each person registered. Copies shall also be
17 placed on file with the secretary of state, the clerk of
18 each incorporated city and town, and in the office of each
19 county clerk and recorder within the state and furnished to
20 the public on request at a fee established by the board."

21 Section 8. Section 37-67-331, MCA, is amended to read:

22 "37-67-331. Revocation, suspension, or refusal to
23 renew certificate -- grounds -- procedure -- reinstatement.

24 (1) The board may reprimand or revoke, suspend, or refuse to
25 renew the certificate of a registrant found guilty of:

1 (a) fraud or deceit in obtaining a certificate of
2 registration;

3 (b) gross negligence, incompetency, or misconduct in
4 the practice of engineering or land surveying as a
5 registered professional engineer or land surveyor;

6 (c) a felony;

7 (d) violation of rules for professional conduct for
8 professional engineers and land surveyors adopted by the
9 board;

10 (e) if a land surveyor, failure to comply with the
11 Corner Recordation Act.

12 (2) Any person may make charges of fraud, deceit,
13 gross negligence, incompetency, or misconduct against a
14 registrant. The charges shall be made by affidavit and
15 subscribed and sworn to by the person making them and filed
16 with the department. ~~Unless--dismissed--by--the--board--as~~
17 ~~unfounded--or--trivial--charges-shall-be-heard-by-the-board~~
18 ~~within-3-months-after-the-date-on-which-they-were-made. The~~
19 ~~charges shall be investigated by the board and, unless the~~
20 ~~board dismisses the charges after investigation as unfounded~~
21 ~~or trivial, it shall act on the charges within 6 months~~
22 ~~after the date on which the charges were made. The board is~~
23 ~~considered to have acted on the charges if it has given~~
24 ~~notice by mail to the licensee of its intent to revoke,~~
25 ~~suspend, or refuse to renew his license and the notice~~

1 ~~contains the facts or conduct which warrant the intended~~
2 ~~action.~~

3 (3) The board may require a registrant to take a
4 written or oral examination, or both, in a proceeding to
5 reprimand or revoke, suspend, or refuse to renew.

6 (4) If, after hearing, ~~four~~ FIVE or more members of
7 the board vote in favor of sustaining the charges, the board
8 shall reprimand, suspend, refuse to renew, or revoke the
9 certificate of registration of the registered professional
10 engineer or land surveyor.

11 (5) The board, for reasons it considers sufficient,
12 may reissue a certificate of registration to a person whose
13 certificate has been revoked if ~~four~~ FIVE or more members of
14 the board vote in favor of the reissuance."

15 Section 9. Transition. A person appointed prior to
16 July 1, 1979, to the board of professional engineers and
17 land surveyors for a 5-year term shall serve until the
18 expiration of such term. A member of the board appointed
19 after July 1, 1979, shall serve for a term of 4 years as
20 provided in section 3.

21 Section 10. Effective date. This act is effective on
22 passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 330-79

FISCAL NOTE

Form BD-15

In compliance with a written request received February 13, 1979, there is hereby submitted a Fiscal Note for Senate Bill 422 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION:

Provides for the re-establishment of the Board of Professional Engineers and Land Surveyors for 6 years; revises membership; increases fees; etc.

ASSUMPTIONS:

1. The functions of the Board, as pertains to expenditure impact, will remain the same.
2. Fees will be set commensurate with costs.

FISCAL IMPACT:

None.

Funding to continue the program is contained in the Executive Budget.

Funding is from an earmarked revenue fund account.

Richard L. Frank
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/14/79